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JUN 18 1997

June 18, 1997

William F. Caton, Acting Secretary
Federal Communications Commission
Washington, D.C. 20554

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NEW YORK, NY 10022-2585

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ONE GATEWAY CENTER
NEWARK, NJ 07102-5397

SPECIAL COUNSEL
JEROLD L. JACOBS

Re: MM Docket No. 97-86
FM Table of Allotments
(Camdenton, Missouri)

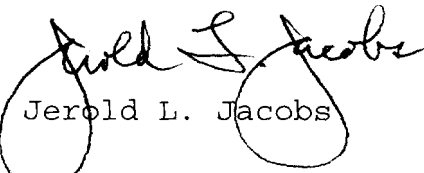
DOCKET FILE COPY ORIGINAL

Dear Mr. Caton:

Enclosed herewith for filing, on behalf of our client, Lake Broadcasting, Inc., are an original and four (4) copies of its "Opposition to Motion to Strike" in the above-referenced matter.

Please direct all inquiries and communications concerning this matter to the undersigned.

Very truly yours,


Jerold L. Jacobs

Enc.

cc: As on Certificate of Service (all w/enc.)

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

RECEIVED

JUN 18 1997

Federal Communications Commission
Office of Secretary

In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. 97-86
Table of Allotments,) RM-9025
FM Broadcast Stations) RM-9084
(Camdenton, Laurie, and Humansville, Missouri))

TO: Chief, Allocations Branch
Mass Media Bureau

OPPOSITION TO MOTION TO STRIKE

LAKE BROADCASTING, INC. ("Lake"), licensee of Station KBMX(FM), Eldon, Missouri, by its attorneys and pursuant to §§1.4(h) and 1.45(a) of the Commission's Rules, hereby submits its opposition to the June 5, 1997 "Motion to Strike" ("Motion") by Bott Communications, Inc. ("Bott") in this proceeding. In support whereof, the following is shown:

1. It is important to put Bott's Motion into proper perspective. Lake filed a six-page/six-paragraph "Counterproposal Reply Comments" in this proceeding, and Bott asks only that a single paragraph thereof, which is less than one page long, be stricken. For ease of analysis, Lake herewith reprints (in condensed form) the language to which Bott objects:

4. Second, counsel for Bott is still supporting use of Channel 264A at Waynesville to achieve a "global solution" in another FM channel rulemaking proceeding on behalf of another client - Zimmer Radio of Mid-Missouri, licensee of Station KCMQ(FM), Columbia, Missouri. See Zimmer's February 15, 1996 "Opposition to Petitions for Reconsideration (at 8) concerning FM Table of Allotments (Columbia, Bourbon, Leasburg, Gerald, Dixon and Cuba MO)(MM Docket No. 92-214) (the "Columbia" proceeding), 10 FCC Rcd 12624 (Mass Media Bur. 1995). In the Columbia proceeding, Lake filed a Reply on February 28, 1996, which "welcome[d] the realization by Zimmer...that Channel 264A...may be available to Waynesville, Missouri..." Lake submits that Bott's counsel is legally and ethically estopped from arguing against protection of Waynesville Channel 264A in this proceeding, while the same counsel continues to argue in favor of protecting Waynesville Channel 264A in the Columbia proceeding. See D.C. Rules of Professional Conduct, Rule 1.7 (lawyer cannot represent clients with adverse positions on same matter). Here, the "matter" in question is protecting Waynesville Channel 264A. If Zimmer prevails on its pro-Channel 264A argument in the Columbia proceeding, that will dictate the Commission's result in both proceedings and negate Bott's anti-Channel 264A [argument] here, and vice-versa. The Commission should require Bott's counsel to adopt a single position on this question in both proceedings, or withdraw from representing Zimmer and/or Bott.

2. Bott says (Motion at 2)(emphasis added) that, in the above-quoted paragraph, "Lake claimed that counsel for Bott had requested the allotment of Channel 264A at Waynesville in another rulemaking proceeding". However, it is obvious that Lake made no such statement or claim (although Lake believes that the language used by Bott's counsel was tantamount to a "request"). Lake merely pointed out (emphasis in original) that:

- a) [C]ounsel for Bott is still supporting use of Channel 264A at Waynesville to achieve a "global solution" in another FM channel rulemaking proceeding;
- b) Bott's counsel is legally and ethically estopped from arguing against protection of Waynesville Channel 264A in this proceeding, while the same counsel continues to argue in favor of protecting Waynesville Channel 264A in the Columbia proceeding; and
- c) If Zimmer prevails on its pro-Channel 264A argument in the Columbia proceeding, that will dictate the Commission's result in both proceedings and negate Bott's anti-Channel 264A [argument] here, and vice-versa.

Although Bott bristles at Lake's choice of words to characterize its counsel's statements in the Columbia, Missouri FM rulemaking proceeding, Bott admits in its Motion (at 5) that "Zimmer also stated [in the Columbia proceeding] that the apparent availability of Channel 264A was an 'alternative means of severing the mutual exclusivity' between the Columbia and Eldon proceedings". But this excerpt fails to give the full flavor of Zimmer's views. The actual words Zimmer used in its pleading (Feb. 15, 1996 "Opposition to Petition for Reconsideration" at 8)(emphasis added) were:

[I]n a further effort to propose a resolution of this protracted rulemaking proceeding...Zimmer respectfully submits that Channel 264A apparently is available as...a substitute channel at Waynesville, Missouri.

3. Lake submits that the above-quoted Zimmer language has been reasonably and properly parsed by Lake as "supporting use of Channel 264A at Waynesville," "in favor of protecting Waynesville Channel 264A in the Columbia proceeding," and a "pro-Channel 264A

argument in the Columbia proceeding". Hence, it is irrelevant that, as Bott states in its Motion (at 5)(emphasis added): "Zimmer never specifically requested that Channel 264A be allotted to Waynesville...[and that] the Channel 244C1 upgrade at Columbia is not dependent upon the availability of Channel 264A at Waynesville," and it is simply wrong for Bott to assert (id.) that "the suggested alternative allotment [of Channel 264A to Waynesville] is not 'adverse' and does not conflict with Bott's counterproposal in this proceeding". The fact is that allotting Channel 264A in the Columbia proceeding is appropriate for a "global solution" in that proceeding, such a solution is obviously mutually acceptable to Zimmer and Lake, and Bott's counterproposal in this proceeding would preclude allotting Channel 264A in the Columbia proceeding, which Zimmer "propose[s as] a resolution" of that proceeding. See Paragraph 2 above.

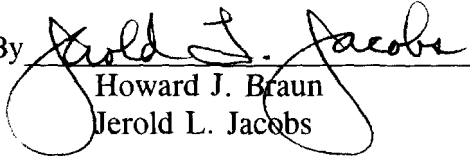
4. Under these circumstances, Lake reiterates its contention that counsel for Bott is dis-serving its Zimmer client by promoting the Bott counterproposal in this proceeding, and vice-versa. If Zimmer prevails on its pro-Channel 264A argument in the Columbia proceeding, that will dictate the Commission's result in both proceedings and negate Bott's anti-Channel 264A argument here, and vice-versa. Therefore, Bott is clearly mistaken when it charges (Motion at 6) that Lake's allegation of impermissible conflict is "a flat misrepresentation intended to distract the Commission from reaching a fair result in this proceeding". It is Bott's Motion which falls "flat" as a specious exercise in semantics. Lake fully demonstrated in its Counterproposal Reply Comments that if the Commission allows Bott to specify Channel 265C3 at Humansville, instead of Laurie, in this proceeding, Bott will still receive a decisive allotment preference over CCB's Camdenton proposal and the proposed allotment of Channel 264A to Waynesville will be protected, permitting the mutual exclusivity among the Eldon, Columbia, and Ava proceedings

to be severed in a way that also permits the Commission to allot Channel 270C1 to Eldon. Thus, the proposed Humansville allotment waiver allows a "global solution" to occur in four related Missouri FM channel rulemaking proceedings. Surely that result (or the allotment of Channel 265A to Camdenton, Missouri with appropriate site restriction and allotment reference coordinates) is the truly "fair result" here.

WHEREFORE, in light of the foregoing, Lake Broadcasting, Inc. respectfully requests that the Commission should deny Bott's Motion and either should allot Channel 265A to Camdenton, Missouri with appropriate site restriction and allotment reference coordinates or should allot Channel 265C3 to Humansville, Missouri.

Respectfully submitted,

LAKE BROADCASTING, INC.

By 
Howard J. Braun
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Its Attorneys

Dated: June 18, 1997

CERTIFICATE OF SERVICE

I, Sharon P. Young, a secretary in the law offices of Rosenman & Colin LLP, do hereby certify that on this 18th day of June, 1997, I have caused to be mailed, or hand-delivered, a copy of the foregoing "**Opposition to Motion to Strike**" to the following:

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Sharon P. Young

***BY HAND**